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Supreme Court, U.S.
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No. ____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

Velma R. Billman, *Petitioner,*

v.

State of Ohio, Franklin County Department of Human Services, *Respondent.*

On Petition for a Writ of Certiorari
To The Court of Appeals of Ohio
for the Tenth Appellate District

PETITION FOR A WRIT OF CERTIORARI

DONALD LYNN BILLMAN
Counsel of Record
BILLMAN LAW OFFICE
915 South High Street
Columbus, Ohio 43206-2574
614- 443-0506
Counsel for Petitioner

October 15, 1996

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QUESTIONS PRESENTED

(1) Whether the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States require a State to afford a Senior Citizen the right of appellate review of action initiated under a state statute to force that Senior Citizen to accept intrusion of state social workers into her life against the Senior Person's will and in the face of testimony from her Physicians declaring that she is competent, not neglected and not abused, notwithstanding which the state Probate Court granted the state's department of human services all relief requested ordering the Senior Citizen to submit to the department's employees while prohibiting the presence of her Counsel or family members, under a state statutory proceeding, precursory to a subsequent guardianship-commitment action to appoint a state employee her guardian empowered to direct and control her life choices, including to remove her from her home and family to a state mental institution or nursing home, all in disregard to her declared desires.

(2) Whether a senior citizen of sound mind has the constitutional right to refuse a State's efforts to force *protective services* over her, that is whether she has the right to *be left alone.*

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

VELMA R. BILLMAN, Petitioner,

v.

STATE OF OHIO, FRANKLIN COUNTY DEPARTMENT OF HUMAN SERVICES, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF OHIO FOR THE TENTH APPELLATE DISTRICT

Velma R. Billman respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of Ohio for the Tenth Appellate District in this case.

OPINIONS BELOW

The Court of Appeals of Ohio, Tenth Appellate District, did not issue an opinion separate from its Journal Entry of Dismissal entered on January 19, 1996, (App., *infra*, 1a). The court of appeals did not issue an

opinion separate from its Journal Entry entered on February 9, 1996, (App., *infra*, 3a). The Supreme Court of Ohio did not issue an opinion separate from its Entry, entered on July 17, 1996, (App., *infra*, 5a). The journal entries are all unreported.

JURISDICTION

The judgment of the Court of Appeals of Ohio, Tenth Appellate District, was entered on January 19, 1996, (App., *infra*, 1a). The Court of Appeals of Ohio, Tenth Appellate District, denied a timely application for reconsideration on February 9, 1996, (App., *infra*.3a). On July 17, 1996 the Supreme Court of Ohio declined jurisdiction to hear the case, (App., *infra*, 5a).

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (a).

STATUTORY PROVISIONS INVOLVED

The Constitution of the United States, Fourteenth Amendment, provides, in relevant part, that "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Ohio statutes involved in this case appear in the Ohio Revised Code, Title 51, Public Welfare, Chapter 5101, Department of Human Services:

(1) Section 5101.60, Definitions, (B) "Adult". A complete copy of the said statutory definition of "Adult" is attached hereto. (App., *infra*.6a).

(2) Section 5101.62, Investigation of report concerning an "Adult". A complete copy of which is attached hereto, (App., *infra*. 8a).

(3) Section 5101.63, Temporary restraining order to prevent interference or obstruction of investigation. A complete copy of which is attached hereto, (App., *infra*, 10a).

(4) Section 5101.64, Request or consent to receiving protective services. A complete copy of which is attached hereto, (App., *infra*, 11a)

STATEMENT

The Ohio statutory scheme under challenge authorizes the various county "department of human services" to conduct an "... investigation ... for evaluating the need for and, to the extent of (the person's) available funds, providing or arranging for the provision of protective services ...", Section 5101.62, Ohio Revised Code, (App., *infra,* 8a), for an "... 'adult' ... any person sixty years of age or older within this state who is handicapped by the infirmities of aging or who has a physical or mental impairment ... and who resides in an independent living arrangement ... a domicile of a person's own choosing ...", Section 5101.60 (B), Ohio Revised Code, (App., *infra*, 6a). The involuntary "protective services", Section 5101.60 (N), Ohio Revised Code, (App., *infra*, 6a), is statutorily defined as, in essence, the complete and absolute control of the Senior Citizen's life choices at the exclusion of their independent decisions and at the exclusion of the involvement of their Family.

The statutory scheme includes a procedure whereby the county department of human services is empowered to file a "petition" with the probate court and ob-

tain — in an *ex parte* hearing without notice to the "Adult" — for a "... restraining order ..." against "... any person, including the adult who is the subject of the investigation, (who) denies or obstructs access to the residence of the adult ...", Section 5101.63, Ohio Revised Code, (App., *infra*, 10a).

(A) OHIO'S ACTION AGAINST PETITIONER:

This case arose following repeated efforts, over a year's time, by social workers employed by Respondent Franklin County, Ohio, Department of Human Services' Adult Protective Services division, (hereinafter Adult Protective Services or APS), to convince Petitioner Velma R. Billman, (hereinafter Mrs. Billman), a *Senior Citizen* residing in her own home with her Husband of Sixty One Years and employed as a Secretary-Para Legal in her son's Law Office, to accept its *services.*

When Mrs. Billman rejected these social workers efforts to direct and control her life — they insisted that she (and her husband) move into a *Nursing Home* and that she quit working in the Billman Law Office — and demanded that she *be left alone* and sought support from her Attorney, (also her son) to enforce her civil right's, the Respondent filed its petition in the probate court.

Respondent filed its first case, *In Re Velma Billman,* Case No. 348826-PS-135, on September 21, 1995, for an order for involuntary acceptance of its *protective services* against Mrs. Billman's will and forbidding her Attorney from being present. The probate court issued its order in an *ex parte* proceeding, without notice and without a hearing. With the probate court ordered relief the APS's social workers went to Mrs. Billman's home in Grove City, Ohio.

On September 26, 1995 Mrs. Billman was prevented from leaving her home in Grove City for her job at the Billman Law Office and was forced to submit to interrogation by Franklin County's "Protective Services Case Manager" Doreen White and its "Older Adult Assessment Specialist" John Treacy — who were accompanied by three Grove City Police Cruisers and three Franklin County Sheriff's Cruisers, with as many armed Police Officers — upon the *authority* of the "ENTRY AND TEMPORARY RESTRAINING ORDER" issued by the Franklin County Probate Court on September 21, 1995 in said case of *In Re Velma Billman* Case No. 348826-PS-135, allegedly upon *findings* in an *Ex Parte* Hearing held on that same day in Probate Court. Under the directive of the Probate Court the said Police prevented Velma Billman's Attorney — who was present — from advising her and forced him from the home so that he could not even observe the interrogation of his Client, (also his Mother). Further upon "orders" of Doreen White a Franklin County Deputy Sheriff forcibly took a Video Camera away from Velma Billman's Attorney. All of this was established in the record upon cross examination of APS's social worker at the hearing achieved under Respondent's second case against Mrs. Billman, see: October 24, 1995 Hearing Transcript, 127.

With the events of September 26, 1995 Mrs. Billman and her Counsel had *notice* of the probate court's judgment in *In Re: Velma Billman,* Case No. 348826-PS-135, however upon examining the probate court's file and talking to its magistrate learned that that matter was concluded and he could do nothing to reopen and undo what had already been ordered and accomplished. Because the probate court had made no record of proceedings, in complete disregard to the requirement of Ohio Civil Rule 53 (D) (2), that "... all proceedings be-

fore the magistrate shall be recorded ...", and in fact had done nothing but to approve the relief requested, an attempt to appeal would have been an exercise in futility. It was Mrs. Billman's Counsel's decision to attempt to get this matter resolved by cooperation and direct contact with APS's Counsel, Franklin County Prosecutor Miller.

When, on Friday, October 20, 1995 the Respondent's APS social worker filed its second case against Mrs. Billman seeking to obtain a second judgment of involuntary *protective services* upon Mrs. Billman, she was better prepared to defend her liberty. Her Counsel had anticipated such an occurrence upon learning that the earlier judgment had expired.

On Saturday, October 21, 1995 Mrs. Billman's Counsel learned that the Respondent had filed a second case under Section 5101.63, Petition For Restraining Order, Ohio Revised Code, (App., *infra,* 10a), which was scheduled for "hearing" at 9:00 AM Tuesday, October 24, 1995.

That the Adult Protective Services' second case against Mrs. Billman, *In Re: Velma R. Billman*, Case No. 348826-PS-138, was set for a hearing was an aberration from its traditional practice of filing of a Section 5101.63, Ohio Revised Code, Petition simultaneously with a pre-prepared entry which the probate court would perfunctorily approve. Upon the good-offices of the Franklin County Prosecutor Michael Miller, Mrs. Billman got a *hearing of sorts.* Mrs. Billman's Counsel had been conferring with Prosecutor Miller and his First Assistant Prosecutor since the September 26, 1995 incident at Mrs. Billman's home. The Prosecutor was provided with documentation and case law in an effort to resolve the matter by rebutting what the Franklin County Department of Human Services was doing pur-

suant to the challenged Statutes with the request that Mrs. Billman be given notice of any further court proceedings. Prosecutor Miller directed his First Assistant Prosecutor, William B. Shimp, Jr., to direct the Department's counsel, Assistant Prosecutor John Kahle, to give Mrs. Billman's Counsel actual notice in advance of any further case filings.

When First Assistant Prosecutor Shimp learned that notice had not been given to Mrs. Billman's Counsel of the second case filing with hearing scheduled, on Saturday, October 21, 1995, he telephoned Mrs. Billman's Counsel at his Hocking County Forest Preserve indicating: "... I wanted to give you warning ... (of the second filing and hearing because) I think the Court needs to hear from you and maybe get this thing ended ...". Mrs. Billman's Counsel immediately returned to his Columbus Office and attempted to assemble a defense upon his anticipation that what the Department of Human Services had filed, (Mr. Shimp did not know what had been filed only that another case directed against Velma Billman had been filed), was similar to the allegations and relief sought in the first case. With the court and clerk of courts not working on Saturday and Sunday Mrs. Billman's defense had to be formulated upon what had occurred in the first case and the research done in regard thereto.

On the morning of October 24, 1995 — before the scheduled *Hearing* — Mrs. Billman filed her MOTION TO DISMISS & MEMORANDUM IN OPPOSITION TO ISSUANCE OF ANY FURTHER *EX PARTE* ORDERS WITHOUT COMPLYING WITH CONSTITUTIONAL STANDARDS, supported by the AFFIDAVIT OF VELMA R. BILLMAN; the AFFIDAVIT OF CHARLES H. BILLMAN, (Mrs. Billman's Husband); the NOTARIZED LETTER OF DOUGLAS C.

WALLACE, M.D., (Mrs. Billman's Family Physician); the LETTER OF ORTHOPEDIC SURGEON DAVID M. VAZIRI, M.D., (Mrs. Billman's surgeon); ATTORNEY BILLMAN'S LETTER OF OCTOBER 4, 1995 TO WILLIAM B. SHIMP, JR., and the TRANSCRIPT/RECORD OF PROCEEDINGS OF SEPTEMBER 18, 1995, (a record of events when Mrs. Billman was made available for interview by APS at the Billman Law Office, before the issuance of the *first* Petition filing and order of September 21, 1995.

In her Affidavit Mrs. Billman stated that she did not want, desire or need APS's *services* and this was further supported by her Husband and her Physicians.

On October 24, 1995 the matter of APS's *second case* came on for *HEARING* — which was a 'RECORD HEARING" upon the appearance of Mrs. Billman's Counsel with a Court Reporter in hand, upon his experience of the failed attempt to obtain a "transcript" of the September 21, 1995 "hearing". He had been advised by the Probate Court that "... hearings before magistrates are not recorded ...", as required by Ohio Civil Rule 53 (D) (2), and contrary to the Entry of September 21, 1995 which implied that there was a hearing, Counsel was told that there was no hearing.

APS's *second* case's Petition was supported only by the Affidavit of APS's Social Worker Doreen White which alleged — as the *basis* for a second order — was that the September 21, 1995:

> ...order expired on October 5, 1995. Petitioner still has not gained access to Mrs. Billman to conduct its investigation and it is apparent that Donald Billman and her husband, Charles Billman, are continuing to deny and obstruct access to Mrs. Billman...

The only *evidence* offered by the APS at the hearing was the testimony of its Social Worker Doreen White.

On cross-examination at the October 24, 1995 Hearing APS's White admitted that that sworn statement was not true, that she, Ms. White, had in fact "... gained access ..." to Mrs. Billman on September 26, 1995, however complained that it was "... only for an hour ...", and that she, Ms. White, had voluntarily terminated it because:

> ....MRS. BILLMAN KEPT SAYING, AM I GOING TO BE ABLE TO GO TO THE OFFICE? HOW LONG IS IT GOING TO TAKE? AM I GOING TO GO TO THE OFFICE? ....
>
> Testimony of Franklin County's *Protective* Services Case Manager DOREEN WHITE at 10-24-95 HEARING Transcript, P.132.

During the October 24, 1995 Hearing — and upon review of the Transcript of same — Mrs. Billman and her counsel attempted to identify some *fact* tending to establish a compelling state interest, was there any alleged abuse or neglect? No fact nor occurrence constituting neglect nor abuse was testified to, only a second court sanctioned intrusion into Mrs. Billman's life was requested — Social Worker White asked that her *fishing trip* into Mrs. Billman's affairs be forced upon her, Mrs. Billman, by the Probate Court. What was established from the testimony of APS Social Worker White was a bias, invidious discrimination, against persons because of age. This Social Worker testified, Hearing Transcript P.170:

....WHAT YOU HAVE TO REALIZE IS WHEN YOU DEAL WITH PERSONS 60 YEARS OF AGE AND OVER, DEMENTIA SETS IN ... .

In regard to what Franklin County wanted a second order for, its "Protective Services Case Manager" White testified that it wanted its Psychiatrist, Dr. Chad Schuttes, to "...assess ..." Mrs. Billman. When asked, to assess what, she testified, Hearing Transcript, P.172:

...HER MENTAL CAPACITIES AT THIS POINT. YOUR MOTHER IS 83 YEARS OLD... .

When she interviewed Mrs. Billman on September 26, 1995 Social Worker White told Mrs. Billman that "... they would force me to be examined by '...one of our doctors...', I told them I had my own Physicians and was not going to submit to examination by their doctor ...", Affidavit Of Velma R. Billman, Paragraph 7.

On October 26, 1995 the Probate Court granted Respondent the ultimate relief which it had requested — forcing Mrs. Billman to submit to examination by APS's staff, denying Mrs. Billman legal representation and exclusion of her Husband — upon ignoring Mrs. Billman's *refusal to consent*, and upon ignoring the testimony of Mrs. Billman's two Physicians and without regard to the lack of any evidence of a *compelling need.*

Mrs. Billman is a *Senior Citizen* who has returned to limited duty work in the Billman Law Office — to a position which she has held for sixteen years — after suffering a cerebrovascular accident (stroke) on December 17, 1994 and after obtaining all rehabilitation services available from medical care providers, at the Arlington Court Rehabilitation Center, and has recovered from a surgically corrected fracture of her left proximal femur. In the words of Physician Wallace, she is,

in his "... medical opinion that Velma is healthier, both medically and mentally, and happier than she was while in Arlington Court ...", Notarized-Letter of Douglas C. Wallace, M.D. In his Affidavit, filed with the Ohio Probate Court, Physician Wallace stated, (App., *infra*, 16a):

> ... It is my documented opinion, shared in by other Physicians with whom I have consulted regarding Velma and Charles, that they are neither abused, neglected or incompetent to manage, and assist in, their own affairs.
>
> ...It is my medical opinion that continuing this matter by permitting various persons to again (and again) interview, interrogate, examine, etc. Velma R. Billman and Charles H. Billman is to create a very serious risk to the health of my Patients and is life threatening conduct.

(B) PROCEEDINGS BELOW:

The matter *sub judice* concerns the judgment of the Court of Appeals of Ohio for the Tenth Appellate District denying Petitioner Velma R. Billman's appeal of the judgment of the Franklin County Probate Court.

On November 27, 1995 Mrs. Billman filed her notice of appeal to the court of appeals from the October 26, 1995 judgment of the Franklin County Probate Court in the case of In *Re: Velma R. Billman*, Case No. 348826-PS-138. The probate court awarded Respondent Franklin County Department of Human Services all relief sought in its petition forcing Mrs. Billman to accept its services against her will and directing the "... Franklin County Sheriff... to use whatever means are necessary ... in order to accomplish the order herein...". No appeal was taken from the September

21, 1995 judgment of the probate court in the case of *In Re: Velma Billman*, Case No. 348826-PS-135, because it was totally *ex parte* and there was no record of proceedings.

On January 19, 1996 the Court of Appeals of Ohio journalized its Journal Entry Of Dismissal, (App., *infra*, 1a), *sua sponte* dismissing her appeal after her Brief, and Statement Of Assignments Of Error, (App., *infra*, 20a), had been filed on January 2, 1996. The court of appeals held that the "... orders are not final, appealable orders ..." however wrote no opinion explaining why it was not a final order, what remained to be decided under the petition which had created the case, or why such action against the constitutional rights of a Senior Citizen were not "... appealable ...". While the merits of Petitioner's claims of error by the probate court in its judgment may not be presently before this Court, due to the refusal of the appellate courts below to consider those claims, a copy of the probate court's Entry And Temporary Restraining Order of October 26, 1995 is included in the Appendix hereto. (App., *infra*, 23a).

On January 26, 1996 Mrs. Billman filed her Application For Reconsideration with the court of appeals contending that the probate court judgment was appealable under Section 2, Article IV of the Ohio Constitution and Section 2505.02 (1), Ohio Revised Code — which defines a final appealable order as "... an order that affects a substantial right and in effect determines the action ..." — and that the *substantial rights* which were affected were her Fourteenth Amendment Rights under the Constitution of the United States of Due Process and Equal Protection and the *right to be left alone* citing this Court's ruling in *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, (1990).

On February 9, 1996 the Court Of Appeals of Ohio journalized its Journal Entry, (App., *infra* 3a), denying Mrs. Billman's application for reconsideration without offering any opinion as to why such action by a probate court against the constitutional rights of a Senior Citizen are not appealable.

On March 4, 1996 Petitioner filed her application to the Supreme Court of Ohio for it to exercise discretionary review of the court of appeals decision and judgment. By Entry of July 17, 1996, (App., *infra*, 5a) the Supreme Court of Ohio declined jurisdiction to hear the case upon the opinion of: "...as not involving any substantial constitutional question ...". That Petitioner raised the question presented to this Court to the Supreme Court of Ohio she offers in documentation of same a copy of the table of contents to her memorandum filed with the Supreme Court of Ohio which lists the "Propositions Of Law" submitted for that court's consideration, (App., *infra*, 18a).

REASONS FOR GRANTING THE PETITION

I. THE RIGHT TO BE LEFT ALONE:

> *...Every human being of adult years and sound mind has the right to determine what shall be done with his own body... .*
>
> *Schloendorff v. Society of New York Hospital*, (1914), 211 N.Y. 125, 129-130, Justice Cardozo.

The Ohio statutory scheme under challenge undermines the protection which this Court has steadfastly acted to protect against — the imposition of state control over individual liberty. In *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 269 (1990), theCourt

approved the rule as stated by Justice Cardzo of the Court Of Appeals of New York, and reaffirmed its own ruling in *Union Pacific R. Co. v. Boteford*, 141 U.S. 250, 251, (1891), that:

> ...no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law....

The Court observed that this fundamental right was originally based upon the common law doctrine of informed consent and expanded upon this in *Cruzan, supra*, 271:

> The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment.

The Supreme Court has made clear that there is a fundamental right of persons *to be left alone* and that it is also based on the constitutional right to privacy as enunciated in *Griswold v. Connecticut*, 381 U.S. 479, (1965).

In a pre *Cruzan* case the constitutional right to privacy was extended to a person's right to decline medical treatment even when without which death is very probable, *see: In Re Quinlan* (1976), 70 N.J. 10, 40, *cert. denied*, 429 U.S. 922. The right to refuse medical treatment has now been extended to an "Incompetent Person" — the situation in *Cruzan* with the court addressing only the "standard of proof" necessary to determine what the specifics of the Person's desires were before the on-set of the *incompetency*. The court approved the concept of "Living Wills" — a document

which might better be described *as a declaration to be left alone should the declarant become unable to articulate her choices for her life.*

The applicability of the *Due Process* Clause of the Fourteenth Amendment to the actions of Respondent is well established. As Chief Justice Burger noted in *O'Connor v. Donaldson*, 422 U.S. 563, 580 (1975) (concurring opinion):

> ... There can be no doubt that involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law... .

The Ohio Statutory procedure for confining an "... 'adult'... person sixty years of age or older...", Section 5101.60 (B), Ohio Revised Code, (App., *infra,* 6a) consists of two separate civil actions. The statutory authority Section 5101.60 *et seq.,* Ohio Revised Code, provides for the civil action *sub judice,* which compels (as its relief) the Senior Citizen to accept the State's intrusion into her life and prevents the Senior Citizen from being represented by counsel and/or supported and assisted by family members to resist these social workers, Section 5101.63, Ohio Revised Code, (App., *infra,* 10a). After the State has formulated its "plan" for the Senior Citizen it takes the plan into probate court under another civil action pursuant to Section 5101.65, Ohio Revised Code, for approval. The Statute provides for "rights" in this second court action however the matter is routinely outcome-determined by virtue of the earlier action.

What the Ohio General Assembly did was to enact legislation designed to circumvent and/or prevent a challenge as that made to Iowa's involuntary commit-

ment statutes in *Stamus, et al v. Leonhardt, et al,* 414 F. Supp. 439, (1976). As the Supreme Court of Ohio observed, by way of dicta, in *In Re Fisher,* 39 Ohio St. 2d 71, (1974): "... An analysis of R.C. 5101.60, et seq, as enacted by the Ohio General Assembly, indicates that the legislature apparently made these enactments with the constitutional objections of *Stamus, supra* in mind ...". The Ohio procedure is even more invidious than the Iowa procedure which was declared unconstitutional. Ohio's statutes are directed at Senior Citizens and consists of a two step procedure with the initial civil action being entirely *ex parte* and which denies the subject of the State's action the basic rights as set forth in *Stamus* and goes further - it denies the Senior Citizen the right of appealate review of the actions of its probate court.

The *sine qua non* the rights of Senior Citizens will not be protected is the right of appellate review of the judgment of probate courts compelling them to agree to the implementation of *protective* services.

Petitioner Velma Billman declared that she did not want or need the services of Respondent Franklin County Department Of Human Services and her attending Physicians had declared that she was competent to make those decisions yet the State of Ohio and its probate court issued judgment forcing compliance upon her. So that other Senior Citizens might avoid what she has been subjected to, Mrs. Billman urges this Court to grant *certioranri.*

II. ISSUES *SUB JUDICE* ARE INTERTWINED WITH ISSUES BEFORE THE COURT UPON THE OCTOBER 1, 1996 GRANT OF *CERTIORARI* IN THE *RIGHT TO DIE* CASES:

On October 1, 1996 the Court granted *certiorari* in the matters of *State Of Washington, et al v. Harold Glucksberg*, No. 96-110, and *Vacco, Attorney General of New York v. Timothy Quill, et al*, No. 95-1858, 518 U.S. _____, (1996), concerning the *right to die* issue.

It is respectfully suggested that left unresolved the statutory scheme of States imposing *protective services* over Senior Citizens against the individual's will can be laid at the door of the increase in suicides among our Nation's Senior Citizens. Senior Citizens do not have the luxury, when they find themselves the focus of attention of State social workers, of time or finances to litigate such issues for years, therefore are vulnerable to the prospect of being forced into a nursing home. With the onset of depression at the thought of being forced out of their home and torn from their loved ones they often seek out the "self-help" of suicide.

Should Senior Citizens who are not of a mind to choose suicide — in the event physician assisted suicide becomes a "right" — those persons may find themselves the victim of State social workers who would impose *protective services* and make the "right-to-die" decision for the resisting Senior Citizen.

The Ohio statutory scheme of imposing *involuntary protective services* over the will of individuals who assert the *right to be left alone* needs to be examined by the Court simultaneously with the *right to die* issue.

III. THE FINALITY MATTER:

The Court Of Appeals of Ohio has held — without opinion setting forth its authority and/or reasoning — that the probate court's judgement was "... not final, appealable orders ...", (App., *infra*, la), by merely issuing a summary refusal to consider and review the action of the probate court in issuing judgment to Respondent against the interests of Mrs. Billman.

There are extremely strong policy reasons here, by virtue of Senior Citizens basic constitutional rights, for the Court to here apply the "... practical rather than a technical construction ...", *Cohen v. Beneficial Loan Corp*, 337 U.S. 541, 546, (1949), to the finality requirement.

While Petitioner absolutely disputes any lack of finality to the action below — clearly evident by nothing more than the simple fact that an earlier identical case was commenced, judgment rendered granting all relief requested with which that matter was concluded so that when a subsequent petition was filed it was done so under a new case number — the Court is urged to grant *certiorari* by following the "... 'pragmatic approach' to the question of finality ...", *Bradley v. Richmond School Board*, 416 U.S. 696, 722-723, n. 28, (1974).

This case fits squarely with the Court's indication in *Mathews v. Eldridge*, 424 U.S. 319, 331, n. 11, (1976), "... statutorily created finality requirements should, if possible, be construed so as not to cause crucial collateral claims to be lost and potentially irreparable injuries to be suffered...".

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

DONALD LYNN BILLMAN
Counsel of Record
Billman Law Office
915 South High Street
Columbus, Ohio 43206-2574
(614)443-0506
Counsel for Petitioner

October 15, 1996

APPENDIX A

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

FILED
JAN 19,1996 AM11:50

No. 95APF11-1531
(ACCELERATED CALENDAR)

In Re:
Velma R. Billman,
(Appellant,

Franklin County Department of Human Services Appellee.)

JOURNAL ENTRY OF DISMISSAL

Appellant has filed a notice of appeal from a trial court order granting a temporary restraining order and adopting a magistrate's decision recommending the issuance of a temporary restraining order and denial of a motion to dismiss.
The aforementioned orders are not final, appealable orders. Accordingly, this appeal is sua sponte dismissed.

/s/Donna Bowman
Judge Donna Bowman, P.J.

/s/John Young
Judge John C. Young

/s/Cynthia C. Lazarus
Judge Cynthia C. Lazarus

cc: Michael Miller, PA
John Kahle, APA
Donald Lynn Billman

APPENDIX B

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

FILED
FEB 9, 1996 PM 1:40

No. 95APF11-1531
(ACCELERATED CALENDAR)

In Re:
Velma R. Billman,
(Appellant,

Franklin County Department of Human Services Appellee.)

JOURNAL ENTRY

Appellant's motion for reconsideration of this court's January 19, 1996 journal entry of dismissal is denied.

/s/Donna Bowman
Judge Donna Bowman, P.J.

/s/John C. Young
Judge John C. Young

/s/Cynthia C. Lazarus
Judge Cynthia C. Lazarus

cc: Michael Miller, PA
John Kahle, APA
Donald Lynn Billman

APPENDIX C

The Supreme Court of Ohio

FILED
JUL 17 1996

1996 TERM

In re: Velma R. Billman : Case No. 96-494
: ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:
Docket Fee, $40.00, paid by Donald Lynn Billman.

(Franklin County Court of Appeals; No. 95APF111531)

/s/Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

APPENDIX D

Section 5101.60 Definitions.

As used in sections 5101.60 to 5101.71 of the Revised Code:

***

(B) "Adult" means any person sixty years of age or older within this state who is handicapped by the infirmities of aging or who has a physical or mental impairment which prevents him from providing for his own care or protection, and who resides in an independent living arrangement. An "independent living arrangement" is a domicile of a person's own choosing, including, but not limited to, a private home, apartment, trailer, or rooming house. Except as otherwise provided in this division, "independent living arrangement" includes a community alternative home licensed pursuant to section 3724.03 of the Revised Code but does not include other institutions or facilities licensed by the state, or facilities in which a person resides as a result of voluntary, civil or criminal commitment. "Independent living arrangement" does include adult care facilities licensed pursuant to Chapter 3722. of the Revised Code.

***

(N) "Protective services" means services provided by the county department of human services or its designated agency to an adult who has been determined by evaluation to require such services for the prevention, correction, or discontinuance of an act of as well as con

ditions resulting from abuse, neglect, or exploitation. Protective services may include, but are not limited to, case work services, medical care, mental health services, legal services, fiscal management, home health care, homemaker services, housing-related services, guardianship services, and placement services as well as the provision of such commodities as food, clothing and shelter.

APPENDIX E

Section 5101.62. Investigation of report; written notice of intent; report of conclusion.

The county department of human services shall be responsible for the investigation of all reports provided for in section 5101.61 and all cases referred to it under section 5126.31 of the Revised Code and for evaluating the need for and, to the extent of available funds, providing or arranging for the provision of protective services. The department may designate another agency to perform the department's duties under this section.

Investigation of the report provided for in section 5101.61 or a case referred to the department under section 5126.31 of the Revised Code shall be initiated within twenty-four hours after the department receives the report or case if any emergency exists; otherwise investigation shall be initiated within three working days.

Investigation of the need for protective services shall include a face-to-face visit with the adult who is the subject of the report, preferably in his residence, and consultation with the person who made the report, if feasible, and agencies or persons who have information about the adult's alleged abuse, neglect, or exploitation.

The department shall give written notice of the intent of the investigation and an explanation of the notice in language reasonably understandable to the adult who is the subject of the investigation, at the time of the initial interview with that person.

Upon completion of the investigation, the department shall determine from its findings whether or not the adult who is the subject of the report is in need of protective services. No adult shall be determined to be abused, neglected, or in need of protective services for the sole reason that, in lieu of restraining the obstruction of or interference with the access of the protective services representative, the representative may be accompanied to the residence by a peace officer.

APPENDIX F

Section 5101.63 Temporary restraining order to prevent interference or obstruction of investigation.

If, during the course of an investigation conducted under section 5101.62 of the Revised Code, any person, including the adult who is the subject of the investigation, denies or obstructs access to the residence of the adult, the county department of human services may file a petition in court for a temporary restraining order to prevent the interference or obstruction. The court shall issue a temporary restraining order to prevent the interference or obstruction if it finds there is reasonable cause to believe that the adult is being or has been abused, neglected, or exploited and access to the person's residence has been denied or obstructed. Such a finding is prima-facie evidence that immediate and irreparable injury, loss, or damage will result, so that notice is not required. After obtaining an order restraining the obstruction of or interference with the access of the protective services representative, the representative may be accompanied to the residence by a peace officer.

APPENDIX G

Section 5101.64 Request or consent to receiving protective services.

Any person who requests or consents to receive protective services shall receive such services only after an investigation and determination of a need for protective services, which investigation shall be performed in the same manner as the investigation of a report pursuant to sections 5101.62 and 5101.63 of the Revised Code. If the person withdraws consent, the protective services shall be terminated.

APPENDIX H

IN THE PROBATE COURT OF FRANKLIN COUNTY, OHIO

IN RE: VELMA R. BILLMAN
4283 Haughn Road
Grove City, Ohio

Case No. 348826-PS-135
Judge Lawrence A. Belskis

AFFIDAVIT OF VELMA R. BILLMAN

STATE OF OHIO)
) SS;
COUNTY OF FRANKLIN)

I VELMA R. BILLMAN being first duly sworn make this my AFFIDAVIT for presentment to the Probate Court of Franklin County, SAYING;

(1) I demand that the Court dismiss this case filed by the Franklin County Department of Human Services claiming by its Director's Designee, DOREEN WHITE, that it has "...received a report that you (me, Velma Billman) are suffering from abuse, neglect or exploitation..." per a "Written Notice" which said Ms. White delivered to me, a copy of which is attached.

(2) The said Notice contains an unauthorized and forged "Signature of Adult Person" wherein Ms. White signed my name "for" me. That is false, a lie, I never consented to Ms. White's signing my name. The only person authorized to speak for me is my Attorney, DONALD LYNN BILLMAN, (also my Son), and I am quite capable of signing my own name.

AFFIDAVIT OF VELMA R. BILLMAN
Page 2 of 2

(3) I am employed as a Secretary-Bookkeeper at my Son's Law Office — on limited duty since I am still recovering from a Stroke last December.

(4) I am not being abused by anyone in my Family or among my personal friends but am being abused, harassed and annoyed by persons claiming authority from the Franklin County Department of Human Services — DOREEN WHITE, JAMES OPELT and JOHN TREACY — and various Police Officers and Deputy Sheriffs who Ms. White and/or Mr. Opelt have somehow managed to recruit in their assault upon my civil rights.

(5) I have attempted to explain to Ms. White, Mr. Opelt and Mr. Treacy that its "report" of abuse, neglect or exploitation is false and without any basis — is the result of a vindictive social worker at Grant Medical Center who has attempted to force me into a nursing home against my will — all without success. These people have even convinced this Court to issue an "ex-parte" order preventing my Attorney to be present when they "interview" me. In a further effort to end this matter I suggested to my son that he contact Prosecutor Miller. A copy of my Attorney's letter and its enclosures, all dated October 4, 1995, is now being provided to the Court.

(6) These people will not permit me to live my life as I want to unless this Court stops them. They are making me very nervous and are causing me to have trouble sleeping. I learned, upon a telephone call at -

10:30 AM Saturday, October 21, 1995 from Assistant Prosecutor Shimp, to me at my Hocking County Home, that Doreen White has another "ex-parte" hearing scheduled for Tuesday, October 24, 1995 seeking some further order, Mr. Shimp said he did not know what they were seeking. We had to give up our weekend to come back to Columbus to defend my rights. This interfered with my getting therapy and interfered with my enjoyment of life and I resent it!

(7) Mr. Shimp indicated that he had directed his Assistant John Kahle to hand deliver a copy of Ms. White's motion and hearing notice my son's Law Office "... first thing Monday morning..." however as of 2:30PM this Monday, October 23, 1995 no such documents have been delivered so we lack notice as to what is being requested. I suspect that its what Ms. White and Mr. Opelt told me after I answered all of their questions on September 26, 1995 — they would now force me to be examined by "...one of our doctors ...". I told them I had my own Physicians and was not going to submit to examination by their doctor.

FURTHER AFFIANT SAYETH NOT.

/s/ Velma R. Billman
VELMA R. BILLMAN

SWORN TO AND SUBSCRIBED to before me a NOTARY PUBLIC this 23 day of October, 1995. 3:30PM

/s/John H. McCabe
NOTARY PUBLIC
JOHN H. MCCABE
NOTARY PUBLIC-STATE OF OHIO
MY COMMISSION EXPIRES FEBRUARY 25, 1996

APPENDIX I

IN THE PROBATE COURT OF

FRANKLIN COUNTY, OHIO

Case No. 348826-PS-138
Judge Lawrence A. Belskis

IN RE: VELMA R. BILLMAN

AFFIDAVIT OF DOUGLAS C. WALLACE,M.D.

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

I, DOUGLAS C. WALLACE, M.D., being first duly sworn depose and say that I maintain a medical practice, in Family Medicine, at 3154 Park Street, Grove City, Ohio, and make this Affidavit on behalf of my Patients VELMA R. BILLMAN and Charles H. Billman, for submission to this Court in support of a motion to stay this Court's prior order permitting the representatives of the Franklin County Department of Human Services to continuing its contact with my Patients, SAYING:

(1) It is my medical opinion that continuing this matter by permitting various persons to again (and again) interview, interrogate, examine, etc. Velma R. Billman and Charles H. Billman is to create a very serious risk to the health of my Patients and is life threatening conduct.

(2) It is my medical opinion that there is absolutely no factual basis for the "investigation" byFranklin County's "Adult Protective Services" here. It is my documented opinion, shared in by other Physicians with whom I have consultated regarding Velma and Charles, that they are neither abused, neglected or incompetent to manage, and assist in, their own affairs.

(3) A copy of my notarized letter of October 23, 1995 is attached hereto and incorporated herein by reference.

FURTHER AFFIANT SAYETH NOT.

/s/ Douglas C. Wallace MD
DOUGLAS C. WALLACE, M.D.

SWORN TO AND SUBSCRIBED to before me a NOTARY PUBLIC this 1st day of November, 1995.

/s/Donald L. Billman
NOTARY PUBLIC
Donald L. Billman, Attorney-At-Law
NOTARY PUBLIC-STATE OF OHIO
My commission has no expiration date.
Section 147.03

APPENDIX J

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Proposition Of Law No. I: A Probate Court order entered as the ultimate relief sought in a *Petition For Restraining Order* pursuant to Section 5101.63, *Temporary Restraining Order To Prevent Interference Or Obstruction of Investigation,* Revised Code, determines the action and is a *final appealable order.* 6

Proposition Of Law No. II: ..... A Probate Court Order which grants a Temporary Restraining Order as the ultimate relief requested, thereby determining the action, is a *special proceeding,* see: *Polikoff v. Adam* (1993), 67 Ohio St. 3d 100, and is consistent with the rule in *May Co. v. Bailey Co.* (1910), 81 Ohio St. 471, also see: *State, ex rel. Tollis v. Cuyahoga Cty. Court of Appeals* (1988), 40 Ohio St. 3d 145, and is a *final appealable order.* 8

Proposition of Law No. III: . A Senior Adult Person — who is the subject of a Section 5101.63, Revised Code, *Petition For Restraining Order* — who declines the *service* offered by the Adult Protective Service has a right to appeal a *Tem*

porary Restraining Order issued by a Probate Court as the ultimate relief sought, so that her constitutional rights of *due process, equal protection, fundamental fairness* and *privacy* — to wit the *right to be left alone* — may be protected. 10

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION. 12

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APPENDIX K

STATEMENT OF ASSIGNMENTS OF ERROR

Appellant VELMA R. BILLMAN for her ASSIGNMENTS OF ERROR in regard to the judgment rendered by the PROBATE COURT OF FRANKLIN COUNTY on October 26, 1995 granting Appellee FRANKLIN COUNTY DEPARTMENT OF HUMAN SERVICES the "INTERIM ORDER" and "ENTRY AND TEMPORARY RESTRAINING ORDER" all relief which it had sought in its "PETITION" of October 20, 1995, SAYING THAT:

(1) THE PROBATE COURT ERRED IN NOT DISMISSING THE ACTION WHEN THE ADULT PERSON IN WHO'S NAME THE ACTION WAS FILED PURSUANT TO THE PROVISIONS OF CHAPTER 5101, ADULT PROTECTIVE SERVICES, OHIO REVISED CODE, REFUSED THAT AGENCY'S SERVICES.

(2) THE PROBATE COURT ERRED IN GRANTING THE PETITION UPON A FAILURE OF THE PETITIONER TO ESTABLISH "...REASONABLE CAUSE TO BELIEVE THAT THE ADULT IS BEING OR HAS BEEN ABUSED, NEGLECTED, OR EXPLOITED AND ACCESS TO THE PERSON'S RESIDENCE HAS BEEN DENIED OR OBSTRUCTED ..." AS REQUIRED BY SECTION 5101.63, OHIO REVISED CODE. UPON CLEAR AND CONVINCING EVIDENCE.

(3) THE PROBATE COURT ERRED IN ENTERING AN "INTERIM ORDER" UPON A FAILURE OF PETITIONER TO ESTABLISH THAT, OR ARTICULATE IN ITS SAID ORDER WHAT FACTS DEMONSTRATE THAT "...IMMEDIATE RELIEF IS JUSTIFIED ..." AS REQUIRED BY CIVIL RULE 53 (E) (4) (c).

(4) THE PROBATE COURT ERRED IN AWARDING PETITIONER A SECTION 5101.63, OHIO REVISED CODE, "TEMPORARY RESTRAINING ORDER" WHICH PREVENTED THE ADULT PERSON FROM HAVING HER ATTORNEY PRESENT AND HER HUSBAND PRESENT IF THAT WAS HER REQUEST.

(5) THE PROBATE COURT ABUSED ITS DISCRETION IN AUTHORIZING THE FRANKLIN COUNTY SHERIFF "... TO USE WHATEVER MEANS ARE NECESSARY ... IN ORDER TO ACCOMPLISH THE ORDER HEREIN ...", ENTRY AND TEMPORARY RESTRAINING ORDER OF OCTOBER 26, 1995.

(6) THE PROBATE COURT ERRED IN AWARDING PETITIONER A SECTION 5101.63, OHIO REVISED CODE, "TEMPORARY RESTRAINING ORDER" WHEN IT IS SHOWN THAT THE PETITION SEEKING THAT RELIEF IS BASED UPON FALSE, FRAUDULENT, REPRESENTATIONS.

(7) THE PROBATE COURT ERRED WHEN IT DENIED VELMA R. BILLMAN'S ATTORNEY'S REQUEST FOR A COPY OF THE REPORT PREPARED BY FRANKLIN COUNTY UPON THE HOLDING THAT IT WAS "... CONFIDENTIAL ...", HEARING TRANSCRIPT P.147-148. SECTION 5101.61 (F), OHIO REVISED CODE, PROVIDES "... INFORMATION CONTAINED IN THE REPORT SHALL UPON REQUEST BE MADE AVAILABLE TO THE ADULT WHO IS THE SUBJECT OF THE REPORT ... AND TO LEGAL COUNSEL FOR THE ADULT".

(8) THE PROBATE COURT ERRED IN PERMITTING — AND ASKING FOR —OPINION AND "FEELINGS", FROM FRANKLIN COUNTY'S WITNESS WHITE WITHOUT HAVING QUALIFIED HER AND/OR LAID A PROPER FOUNDATION FOR SAME AS REQUIRED BY RULE 702, OHIO RULES OF EVIDENCE, HEARING TRANSCRIPT P.65 AND 174-176.

(9) THE PROBATE COURT ERRS TO THE PREJUDICE OF THE ADULT PERSON'S DUE PROCESS RIGHTS WHEN IT DOES NOT COMPLY WITH THE REQUIREMENT OF CIVIL RULE 53 (D) (2) THAT "... ALL PROCEEDINGS BEFORE THE MAGISTRATE SHALL BE RECORDED ...".

(10) THE PROBATE COURT ERRED IN NOT HOLDING THAT SECTION 5101.61, OHIO REVISED CODE, IS IN CONFLICT WITH CIVIL RULE 65 (A) AND THEREFORE VIOLATES THE OHIO CONSTITUTION; UPON THE RULE IN ROCKEY V. 84 LUMBER CO. (1993), 66 Ohio St. 3d 221.

APPENDIX L

PROBATE COURT OF FRANKLIN COUNTY, OHIO

LAWRENCE A. BELSKIS, JUDGE

IN RE VELMA BILLMAN

FILED October 26, 1995
Case No. 348826-PS-138

ENTRY AND TEMPORARY RESTRAINING ORDER

This matter came before the Court pursuant to the petition of the Franklin County Department of Human Services for a temporary restraining order restraining Donald L. Billman and Charles Billman from denying or obstructing its access to Velma Billman, for the purpose of continuing the investigation pursuant to Ohio Revised Code Section 5101.,62. This petition was filed on October 20, 1995. The Court finds that there is reasonable cause to believe that Velma Billman is an abused, neglected, or exploited person as defined in Ohio Revised Code Section 5101.60 and that Donald L. Billman and Charles Billman are denying access to the representatives of the Franklin County Department of Human Services who are attempting to conduct an investigation pursuant to Ohio Revised Code 5101.62.

IT IS FURTHER ORDERED AND ADJUDGED that Donald L. Billman and Charles Billman be and hereby are temporarily restrained from interfering with or denying access to Velma Billman by repre-

sentatives of the Franklin County Department of Human Services, and from preventing such representatives from interviewing her out of the presence of her son.

IT IS FURTHER ORDERED that the Franklin County Sheriff is authorized to accompany Doreen White, the Adult Protective Services Case Manager, John Treacy, a mental health assessor from Southeast Mental Health, and Dr. Chad Schultheis, to use whatever means are necessary to obtain access to Mrs. Billman and to interview her out of the presence of her son Donald Billman and her husband Charles Billman, in order to accomplish the order herein.

Date: October 26, 1995

/s/Lawrence A. Belskis
LAWRENCE A. BELSKIS
Probate Judge

FILED October 26, 1995